THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.22172 OF 1996

Date: 09.09.2005

Between:

M/s. Hindustan Machine Tools, Balanagar, Hyderabad, rep.,by its Joint General Manager (PI), Sri K.P.Sarma.

… Petitioner

and

1. The Hon'ble Labour Court-III, Chandravihar complex, Nampally, Hyderabad and two others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.22172 OF 1996

ORDER:

This writ petition is filed challenging the award of the labour Court III in I.D.No. 633 of 1992 dated 26.02.1996.

Facts, to the extent necessary for this writ petition, are that the 2nd respondent was

appointed as a Carpenter in October, 1970. He was issued a charge sheet on 26.06.1987 for habitual absence, since he was frequently absenting himself without leave and had abstained from duty for a period of 296.25 days during the period from 01.01.1985 to 28.02.1987, besides ESI and other eligible leave. The 2nd respondent submitted his explanation on 03.07.1987 admitting the charges, despite which an enquiry was conducted and, on a report being submitted by the Enquiry Officer holding that the charges were proved, the petitioner was issued a show cause notice on 26.08.1989, proposing punishment of dismissal from service. On receipt of explanation from the 2nd respondent on 18.05.1989, the order of punishment of dismissal from service was passed on 05.07.1989, against which the 2nd respondent filed an application under Section 2-A (2) of the Industrial Disputes Act before the labour Court III, Hyderabad. The Labour Court, by order dated 10.04.1995, upheld the validity of the domestic enquiry. Upon exercising its powers under Section 11-A, the labour Court held the charges are proved. However, while dealing with the quantum of punishment, the labour Court held as under:

"Here the petitioner contends that his absence was due to very genuine sickness and not habitual. The company also did not deny the fact of Medical assistance given to the petitioner on the recommendations of the company medical officer during the relevant period. He was also recommended for a loan of Rs.3,000/- for Medical treatment. Hence, his absence is not without any reason. The absence is for a reasonable cause. 'No work – No pay' he is not entitled for back wages, even though respondent issued show cause notice dated 26.04.1989 did not pass order till 03.07.1991. The petitioner submitted his explanation to the show cause notice on 18.05.1991. Subsequently, to the issue of charge sheet also the petitioner was absent for 355 days between 01.03.1987 to 16.11.1990. He appealed to the Management for voluntary retirement. The absence may be due to sickness; hence, the respondent may consider his voluntary retirement after reinstating him into service without attendant benefits and without back wages.

In the result, the 'Award' is passed in favour of the petitioner setting aside the dismissal order and directing the respondent to reinstate the petitioner into service without continuity of service without attendant benefit and without back wages. The respondent shall consider his voluntary retirement after reinstating him into service. Recovery orders shall be issued within 30 days of publication of the award."

The 2nd respondent has been denied back wages, continuity of service and other attendant benefits and the labour Court, substituting the punishment of dismissal imposed by the petitioner herein, has merely chosen to reinstate the 2nd respondent

into the services of the petitioner company.

The labour Court took note of the fact that the absence of the 2nd respondent was due to genuine sickness, that the Company had itself given Medical assistance to the 2nd respondent on the recommendations of the Company Medical Officer and that a loan for Rs.3,000/- had also been recommended for Medical treatment. In such circumstances, the labour Court directed reinstatement of the 2nd respondent while denying back wages, attendant benefits and continuity of service. The 2nd respondent was dismissed from service on 05.07.1991 and the award was passed on 26.02.1996. The 2nd respondent was thus denied back wages for a period in excess of 4 ½ years.

Sri P.Nageswara Sree, Le arned Counsel for the petitioner would vehemently contend that the reasons given by the labour Court for substituting the punishment under Section 11-A are not justified. Learned Counsel would submit that the labour Court had relied on statements made across the Bar, in showing misplaced sympathy to the 2nd respondent despite dearth of evidence. Learned Counsel would further submit that if such a lenient view is permitted to be taken, it would have an adverse effect on discipline in the organization and would encourage others to indulge in similar acts of habitual absenteeism. Learned Counsel would also state that the 2nd respondent has since retired from service on attaining the age of superannuation on 13.11.2004.

Section 11-A of the Industrial Disputes Act confers powers on labour Courts/ Industrial Tribunals not only to reappreciate the evidence on record, but also to decide the appropriate punishment to be imposed. It is open to the labour Court to examine whether the punishment, imposed by the employer, is justified or not. The labour Court, while exercising its jurisdiction under Section 11-A of the Industrial Disputes Act, should not act only on sympathetic considerations, but should consider as to whether the punishment imposed is commensurate to the acts of misconduct held proved. In the case on hand, the labour Court, for absence from duty for a period of 296.25 days during the period of two years two months from 01.01.1985 to 28.02.1987, substituted the punishment of dismissal to one of denial of back wages, continuity of service and other attendant benefits. This Court, while exercising its certiorari jurisdiction under Article 226 of the Constitution of India,

would not sit in appeal over decisions of statutory Tribunals, more so with the discretion conferred, on the labour Court, under Section 11-A of the Industrial Disputes Act. It is only when the punishment, substituted by the labour Court for the one imposed by the employer, is a punishment which could not have been imposed at all or is one which shocks the conscience of the Court, is any interference called for. Denial of back wages for a period of more than four and half years in addition to denying continuity of service and other attendant benefits as a substitution for punishment of dismissal of service imposed by the employer, for the proved misconduct of absence from duty of 296.25 days during a period of 2 years two months, may be one which this Court considers to be lenient, but it cannot be said to be a punishment, which cannot be imposed at all or one which shocks the conscience of this Court. It cannot also be lost sight of that the labour Court found the petitioner's sickness to be genuine, which finding cannot be reappreciated in certiorari proceedings under Article 226 of the Constitution of India. Further, as fairly stated by the learned Counsel for the petitioner, the 2nd respondent has retired from service on attaining the age of superennuation on 30.11.2004. The award of the labour Court does not, therefore, call for any interference.

The writ petition is accordingly dismissed. No order as to costs.

RAMESH RANGANATHAN, J

Date: 09.09.2005

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